

《刑事事宜相互法律協助(印度尼西亞)令》
(第 525 章, 附屬法例 Z)

Mutual Legal Assistance in Criminal Matters (Indonesia) Order
(Cap. 525 sub. leg. Z)

版本日期
Version date
2.8.2012

經核證文本
Verified Copy

(《法例發布條例》(第 614 章) 第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

如某內頁的頁底標明：

- “經核證文本”；及
 - 以下列表顯示的該頁的最後更新日期，
- 該頁所載條文即視作於上述“版本日期”的正確版本。

此文本所載條文，如並非正在實施，會有附註作說明。

A provision is presumed to be correctly stated as at the above version date if it is on a page marked at the bottom with:

- the words “Verified Copy”; and
- the last updated date shown in this table for the page.

Any provision included in this copy that is not in force is marked accordingly.

條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	2.8.2012
附表 1 Schedule 1	S1-1—S1-40	2.8.2012
附表 2 Schedule 2	S2-1—S2-4	2.8.2012

尚未實施的條文 / 修訂 —

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

Please see Hong Kong e-Legislation (<http://www.elegislation.gov.hk>) for information of provisions and amendments not yet in operation.

制定史

本為 2009 年第 41 號法律公告 —— 2012 年第 2 號編輯修訂紀錄

Enactment History

Originally L.N. 41 of 2009 — E.R. 2 of 2012

《刑事事宜相互法律協助(印度尼西亞)令》

(第 525 章, 附屬法例 Z)

目錄

條次		頁次
1.	(已失時效而略去)	1
2.	本條例在香港與印度尼西亞共和國之間適用	1
附表 1	《中華人民共和國香港特別行政區政府與印度尼西亞共和國政府關於刑事事宜相互法律協助的協定》	S1-1
附表 2	對本條例作出的變通	S2-1

Mutual Legal Assistance in Criminal Matters
(Indonesia) Order

(Cap. 525 sub. leg. Z)

Contents

Section		Page
1.	(Omitted as spent)	2
2.	Ordinance to apply between Hong Kong and Republic of Indonesia	2
Schedule 1	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Indonesia Concerning Mutual Legal Assistance in Criminal Matters	S1-2
Schedule 2	Modifications to the Ordinance	S2-2

《刑事事宜相互法律協助 (印度尼西亞) 令》

(第 525 章第 4 條)

(略去制定語式條文 — 2012 年第 2 號編輯修訂紀錄)

[2012 年 6 月 22 日] 2012 年第 104 號法律公告

(格式變更 — 2012 年第 2 號編輯修訂紀錄)

1. (已失時效而略去 — 2012 年第 2 號編輯修訂紀錄)

2. **本條例在香港與印度尼西亞共和國之間適用**

現就副本附錄於附表 1 的相互法律協助的安排，指示本條例在附表 2 指明的變通的規限下，在香港與印度尼西亞共和國之間適用。

Mutual Legal Assistance in Criminal Matters (Indonesia) Order

(Cap. 525, section 4)

(*Enacting provision omitted—E.R. 2 of 2012*)

[22 June 2012] *L.N. 104 of 2012*

(*Format changes—E.R. 2 of 2012*)

1. (*Omitted as spent—E.R. 2 of 2012*)

2. **Ordinance to apply between Hong Kong and Republic of Indonesia**

In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance shall, subject to the modifications specified in Schedule 2, apply as between Hong Kong and the Republic of Indonesia.

S1-1
第 525Z 章

附表 1

Schedule 1

S1-2
Cap. 525Z

附表 1

[第 2 條]

《中華人民共和國香港特別行政區政府與印度尼西亞共和國政府關於刑事事宜相互法律協助的協定》#

中華人民共和國香港特別行政區(“香港特別行政區”)政府經中華人民共和國中央人民政府正式授權，與印度尼西亞共和國政府(以下稱為“締約雙方”)，

為藉着提高締約雙方執法機關在偵查和檢控罪行和沒收犯罪得益以及相應引起的法律程序方面的效能，以加強締約雙方的緊密合作，

協議如下：

第一條

提供協助的範圍

1. 締約雙方須按照本協定的條文，就刑事事宜提供相互協助。

Schedule 1

[s. 2]

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Indonesia Concerning Mutual Legal Assistance in Criminal Matters#

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (“Hong Kong Special Administrative Region”) having been duly authorized by the Central People's Government of the People's Republic of China to conclude this Agreement and the Government of the Republic of Indonesia (hereinafter referred to as “The Parties”);

Desiring to strengthen the close cooperation between the Parties by improving the effectiveness of the law enforcement authorities of the Parties in the investigation and prosecution of crimes, and the confiscation of criminal proceeds and resulting proceedings;

Have agreed as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Parties shall, in accordance with the provisions of this Agreement, grant each other assistance in criminal matters.

S1-3
第 525Z 章

附表 1

2. 就本協定而言，刑事事宜指與任何罪行有關的偵查、檢控或法律程序，而該罪行於協助請求的提出時是在請求方主管機關的司法管轄權範圍內的。

3. 被請求方可就違反關乎課稅、關稅、外匯管制或其他稅務事宜的法律的罪行提供協助，但不可就與上述罪行有關的非刑事法律程序提供協助。

4. 提供的協助包括：

- (a) 從有關的人取得證據及陳述；
- (b) 提供資料、文件、紀錄及證據品目；
- (c) 追尋或辨認有關的人或品目；
- (d) 送達文件；
- (e) 執行搜查和檢取的請求；
- (f) 安排有關的人在請求方的刑事偵查、檢控或法律程序中提供證據或協助；
- (g) 追查、限制、充公、沒收和交還犯罪活動的得益；及
- (h) 請求方認為所需的並符合本協定及被請求方法律的其他協助。

5. 本協定只適用於締約雙方之間所提供的相互協助。本協定的條文並不產生任何讓私人取得、隱藏或排除證據或阻礙執行協助請求的權利。

Schedule 1

S1-4
Cap. 525Z

2. For the purpose of this Agreement, criminal matters mean investigations, prosecutions or proceedings relating to any offence which at the time of the request for assistance, falls within the jurisdiction of the competent authorities of the Requesting Party.

3. Assistance may also be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.

4. Assistance shall include:

- (a) taking evidence or statements from persons;
- (b) providing information, documents, records and items of evidence;
- (c) locating or identifying persons or items;
- (d) serving documents;
- (e) executing requests for search and seizure;
- (f) making arrangements for persons to give evidence or assist in criminal investigations, prosecutions, or proceedings in the Requesting Party;
- (g) tracing, restraining, forfeiting, confiscating and returning the proceeds of criminal activities; and
- (h) other assistance deemed necessary by the Requesting Party and consistent with this Agreement as well as the law of the Requested Party.

5. This Agreement applies solely to the provision of mutual assistance between the Parties. The provisions of this Agreement shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

S1-5
第 525Z 章

附表 1

Schedule 1

S1-6
Cap. 525Z

第二條

不適用情況

1. 本協定不適用於以下情況：
 - (a) 為移交任何人而逮捕或拘留該人；
 - (b) 在被請求方強制執行在請求方所判定的刑事判決，但在被請求方的法律所容許的範圍內者，則不在此限；
 - (c) 移交被羈押的人以便服刑；及
 - (d) 移交刑事事宜的法律程序。
2. 本協定並不賦權任何締約方在另一締約方的領土內行使和執行由該另一締約方當地法律規定完全屬於該另一締約方當局的管轄權和職能。

第三條

其他協助

本協定不得影響任何依據其他協定、安排或因其他情況而在締約雙方之間存在的義務，亦不得妨礙締約雙方依據其他協定、安排或因其他情況而相互提供協助。

ARTICLE 2

NON-APPLICATION

1. This Agreement does not apply to:
 - (a) the arrest or detention of any person with a view to the surrender of that person;
 - (b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
 - (c) the transfer of persons in custody to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.
2. Nothing in this Agreement entitles a Party to undertake in the territory of the other Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic law.

ARTICLE 3

OTHER ASSISTANCE

This Agreement shall not affect any existing obligations between the Parties, whether pursuant to other agreements, arrangements, or otherwise, nor prevent the Parties from providing assistance to each other pursuant to other agreements, arrangements, or otherwise.

S1-7
第 525Z 章

附表 1

Schedule 1

S1-8
Cap. 525Z

第四條

中心機關

1. 締約雙方的中心機關須按照本協定的條文處理相互法律協助的請求。
2. 香港特別行政區的中心機關為律政司司長或經其正式授權的人員。印度尼西亞共和國的中心機關為司法及維護人權部部長。
3. 締約任何一方均可更改其中心機關，但須將有關更改通知對方。
4. 中心機關之間可直接通訊，亦可選擇透過印度尼西亞共和國駐香港特別行政區總領事館通訊。

第五條

請求

1. 協助請求須以書面提出，或在可能的情況下，以任何可製備書面紀錄的方式提出，而該等書面紀錄是在可容許被請求方確定真確性的狀況下製備的。如情況緊急，而被請求方的法律亦予容許，則請求可以口頭提出，但在此等情況下，請求須於五 (5) 天內以書面確認。
2. 協助請求須包括：
 - (a) 進行與請求有關的偵查或刑事法律程序的主管機關的名稱；

ARTICLE 4

CENTRAL AUTHORITY

1. The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.
2. The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorized officer and the Central Authority for the Republic of Indonesia is the Minister for Law and Human Rights.
3. Either Party may change its Central Authority in which case, it shall notify the other Party of the change.
4. The Central Authorities may communicate directly with each other, or, if they choose, through the Consulate General of the Republic of Indonesia in the Hong Kong Special Administrative Region.

ARTICLE 5

REQUESTS

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made verbally, but in such cases the requests shall be confirmed in writing within five (5) days.

S1-9
第 525Z 章

附表 1

Schedule 1

S1-10
Cap. 525Z

- (b) 該項請求的目的及所需協助的性質；
 - (c) 對有關刑事事宜的性質和現況的描述，以及載列有關事實及法律撮要的陳述，包括請求所關乎的罪行的最高刑罰；
 - (d) 對所尋求的有關證據、資料或其他協助的描述；
 - (e) 請求方希望得以遵循的任何特別程序或要求的所據理由及細節；
 - (f) 希望請求得以履行的任何時限的具體說明；
 - (g) 有關保密的任何特別要求及所據理由；及
 - (h) 根據被請求方的當地法律所規定的其他資料或承諾，或為妥善執行請求所需的其他資料或承諾。
3. 在有需要的範圍內，協助要求亦可包括以下資料：
- (a) 關於屬偵查或刑事法律程序的標的的人的身分、國籍及所在的資料；
 - (b) 關於任何被請求提供證據的人的身分及其所在的資料；
 - (c) 關於被送達文件的人的身分及其所在地、該人與該刑事法律程序的關係，以及送達的方式；
 - (d) 關於所追尋的人的身分及下落的資料；
 - (e) 對要取得和記錄任何證供或陳述的方式的描述；
 - (f) 列明要向證人提出的問題清單；
 - (g) 對須交出的文件、紀錄或證據品目的描述，及對被要求交出上述文件、紀錄或證據品目的適當人士的描述，以及 (在沒有其他規定的範圍內) 對交出和認證上述文件、紀錄或證據品目的形式的描述；
 - (h) 述明證據或陳述是否需要經宣誓 (宗教式或非宗教式) 的陳述；
 - (i) 對請求所關乎的財產、資產或物品的描述，包括其所在地；及

2. Requests for assistance shall include:
- (a) the name of the competent authority conducting the investigation or criminal proceedings to which the request relates;
 - (b) the purpose of the request and the nature of the assistance sought;
 - (c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and law, including the maximum penalty for the offence to which the request relates;
 - (d) a description of the evidence, information or other assistance sought;
 - (e) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (f) specification of any time limit within which compliance with the request is desired;
 - (g) any special requirements for confidentiality and the reasons for it; and
 - (h) such other information or undertaking as may be required under the domestic law of the Requested Party or which is otherwise necessary for the proper execution of the request.
3. Requests for assistance may also, to the extent necessary, contain the following information:
- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
 - (b) the identity and location of any person from whom evidence is sought;
 - (c) the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;

S1-11
第 525Z 章

附表 1

- (j) 與所請求的協助有關的任何法庭命令，以及關於該命令的終局性的陳述。
4. 請求、以及支持請求的文件及其他有關材料須以英文書寫，而在被請求方要求下，須附有翻譯為被請求方的法定語文的譯本。
5. 被請求方如認為請求所載的資料不足以處理請求，可要求提供增補資料。請求方須提供被請求方認為履行請求所需的增補資料。

Schedule 1

S1-12
Cap. 525Z

- (d) information on the identity and whereabouts of a person to be located;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be produced and authenticated;
- (h) a statement as to whether sworn or affirmed evidence or statements are required;
- (i) a description of the property, asset or article to which the request relates, including its location; and
- (j) any court order relating to the assistance requested and a statement relating to the finality of that order.
4. The request and documents and other relevant material submitted in support of the request shall be in the English language and, if requested, accompanied by a translation into an official language of the Requested Party.
5. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

第六條

提供協助的限制

1. 如有以下情況，須拒絕提供協助：
 - (a) 請求關乎被請求方認為屬政治性質的罪行；
 - (b) 請求關乎只在軍法下才構成的罪行；
 - (c) 請求關乎因某罪行而對某人進行的檢控，而該人已因同一罪行在被請求方最終被定罪、裁定無罪或赦免或已服刑；
 - (d) 有充分理由相信提出協助請求的目的，是基於某人的種族、性別、宗教、國籍或政治見解而偵查、檢控或懲罰該人，或協助請求將會引致該人因任何該等原因而蒙受不利；
 - (e) 提供協助會損害印度尼西亞共和國的主權、安全、公共秩序或基要利益，或就香港特別行政區而言，會損害中華人民共和國的主權，或會損害中華人民共和國或其任何部分的安全或公共秩序，或會損害香港特別行政區的基要利益；
 - (f) 被指稱構成請求所關乎的罪行的作為或不作為，如在被請求方的司法管轄區發生，並不構成罪行；或
 - (g) 請求方沒有保證，所請求的協助在未得被請求方事先同意下是不會用於不屬請求內所述的用途的。
2. 被請求方如認為有以下情況，可拒絕提供協助：
 - (a) 提供協助會或相當可能會不利於任何人的安全，不論該人是在被請求方的領域以內或以外；或
 - (b) 提供協助會對被請求方的資源造成過大的負擔。
3. 被請求方不可純粹以保守銀行及相類財務機構的秘密或該罪行亦被認為涉及財政事宜為理由，而拒絕提供協助。

ARTICLE 6

LIMITATIONS ON ASSISTANCE

1. Assistance shall be refused if:
 - (a) the request relates to an offence that is regarded by the Requested Party as an offence of a political character;
 - (b) the request relates to an offence only under military law;
 - (c) the request relates to the prosecution of a person for an offence in respect of which the person has been finally convicted, acquitted, pardoned or has served the sentence imposed in the Requested Party;
 - (d) there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions, or, that the request for assistance will result in that person being prejudiced for any of those reasons;
 - (e) the provision of the assistance would impair the sovereignty, security, public order or essential interests of the Republic of Indonesia or in the case of the Hong Kong Special Administrative Region, the sovereignty of the People's Republic of China, or the security or public order of the People's Republic of China or any part thereof or the essential interests of the Hong Kong Special Administrative Region;
 - (f) the acts or omissions alleged to constitute the offence to which the request relates, would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence; or

S1-15
第 525Z 章

附表 1

4. 如立即執行請求會妨礙正在被請求方進行的刑事事宜，被請求方可暫緩執行請求。如要求交付的文件是在被請求方進行的民事法律程序所需要的，被請求方亦可暫緩交付該等文件，而在此情況下，如請求方提出要求，被請求方須提供文件的經核證副本。
5. 在根據本條拒絕請求或暫緩執行請求之前，被請求方須考慮可否在某些條件的規限下提供協助。
6. 請求方如接納在根據第 5 款所要求的條款及條件的規限下接受協助，則須遵守該等條款及條件。
7. 被請求方如拒絕或暫緩提供協助，須迅速將拒絕或暫緩提供協助的理由知會請求方。

Schedule 1

S1-16
Cap. 525Z

- (g) there is no assurance from the Requesting Party that the assistance requested will not be used for purposes other than those stated in the request without the prior consent of the Requested Party.
2. The Requested Party may refuse assistance if, in its opinion:
 - (a) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or
 - (b) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.
3. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.
4. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party. The Requested Party may also postpone the delivery of documents if such documents are required for civil proceedings in that Party, in which case the Requested Party shall, upon request, provide certified copies of documents.
5. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.
6. If the Requesting Party accepts assistance subject to the terms and conditions required under paragraph 5, it shall comply with such terms and conditions.

S1-17
第 525Z 章

附表 1

Schedule 1

S1-18
Cap. 525Z

第七條

執行請求

1. 協助請求須由被請求方的主管機關按照該方的法律迅速執行，並須在該方的法律所容許的範圍內，按照請求方所要求的方式執行。
2. 被請求方如獲悉任何可能導致嚴重延遲執行請求的情況，須迅速將有關情況知會請求方。

第八條

交還物料予被請求方

如根據本協定提供某物料，而有關請求所關乎的刑事事宜不再需要該物料，則凡被請求方有提出要求，請求方須將該物料交還。

第九條

保密及使用限制

1. 被請求方須盡其所能，將協助請求、請求的內容及支持該請求的文件以及依據請求而採取的任何行動保密。倘若無法在不違反保密

ARTICLE 7

EXECUTION OF REQUESTS

7. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

1. Requests for assistance shall be carried out promptly by the competent authorities of the Requested Party in accordance with the law of that Party and, to the extent that law permits, in the manner requested by the Requesting Party.
2. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.

ARTICLE 8

RETURN OF MATERIAL TO REQUESTED PARTY

Where required by the Requested Party, the Requesting Party shall return material provided under this Agreement when it is no longer needed for the criminal matter to which the request relates.

ARTICLE 9

CONFIDENTIALITY AND LIMITATION ON USE

1. The Requested Party shall use its best efforts to keep confidential a request for assistance, the contents of the request and its supporting documentation, and any action taken pursuant to the request. If

S1-19
第 525Z 章

附表 1

的情況下執行請求，則被請求方須在執行請求前將此事知會請求方，請求方須告知是否仍冀望執行請求。

2. 請求方須盡其所能，將被請求方提供的資料及證據保密，但在請求所關乎的刑事事宜需要該等證據及資料的範圍內，以及在被請求方已予授權的情況下，則屬例外。
3. 請求方須盡其所能，確保該等資料或證據受到保護，免遭損失、未經授權取用、改動、披露或誤用。
4. 請求方須提供保證，未經被請求方事先同意，請求方不會使用取得的資料或證據或從該等資料或證據所得的任何東西，作請求所述以外的用途。

第十條

送達文件

1. 被請求方須在其法律所容許的範圍內，執行送達刑事事宜的文件的請求。
2. 如請求送達要求某人以證人身分在請求方出席的傳票，則該項請求須在預定出席的日期前至少四十五 (45) 天向被請求方提出。在緊急的情況下，被請求方可免除這項規定。
3. 被請求方須向請求方送交送達文件證明。如不能送達有關文件，被請求方須知會請求方，並告知有關原因。

Schedule 1

S1-20
Cap. 525Z

the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party before executing the request, and the Requesting Party shall advise whether it nevertheless wishes the request to be executed.

2. The Requesting Party shall use its best efforts to keep confidential the information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the criminal matters to which the request relates and where otherwise authorized by the Requested Party.
3. The Requesting Party shall use its best efforts to ensure that the information or evidence is protected against loss, unauthorized access, modification, disclosure or misuse.
4. The Requesting Party shall provide assurances that it will not use the information or evidence obtained, or anything derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested Party.

ARTICLE 10

SERVICE OF DOCUMENTS

1. The Requested Party shall, to the extent its law permits, carry out requests for the service of documents in respect of a criminal matter.
2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party not less than forty five (45) days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement.

S1-21
第 525Z 章

附表 1

Schedule 1

S1-22
Cap. 525Z

4. 如被送達人沒有遵守送達給該人的法律程序文件的規定，請求方或被請求方不得根據本身的法律而處罰該被送達人或向其施加強制措施。

3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

4. A person who fails to comply with any process served on him or her shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or the Requested Party.

第十一條

ARTICLE 11

錄取證據

TAKING OF EVIDENCE

1. 被請求方須在其法律所容許的範圍內，並因應請求，錄取某些人的證供或取得他們的口供，或要求他們交出證據品目，以供轉交請求方。

1. The Requested Party shall, to the extent its law permits and upon request, take testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. 被請求方須在其法律所容許的範圍內，准許在請求內所指明的人士在執行請求期間在場，以及可准許該等人士及其法律代表向正被錄取證供或證據的人進行訊問。如不容許進行該等直接訊問，則該等人士須獲准提交書面問題。

2. The Requested Party shall, to the extent its law permits, allow the presence of such persons as are specified in the request during the execution of request, and may also allow such persons and their legal representatives to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit written questions.

3. 如被請求方或請求方的法律規定，某人可拒絕作證，則依據在本條下的請求而將會在被請求方被錄取證據的人可拒絕作證。

3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where the law of the Requested Party or that of the Requesting Party so provides.

4. 如任何在被請求方的人聲稱有權利或責任根據請求方的法律拒絕作證，則請求方須因應請求向被請求方提供證明書，以證明該項權利是否存在。在沒有相反證據的情況下，該證明書為其所述事項的充分證據。

4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Requesting Party shall, upon request, provide a certificate to the Requested Party as to the existence of that right. In the absence

5. 就本條而言，錄取證據包括交出文件或其他物料。

S1-23
第 525Z 章

附表 1

Schedule 1

S1-24
Cap. 525Z

第十二條

安排被羈押的人作證或提供協助

1. 被羈押在被請求方的人，可因應請求方的請求，暫時被移交請求方，以在請求方的刑事法律程序中作證或提供協助。
2. 只有在符合以下條件的情況下，被請求方才須將被羈押的人移交請求方：
 - (a) 該人在有自由意願下同意移交；及
 - (b) 請求方同意遵守被請求方就將要被移交的人的羈押或安全而指明的任何條件。
3. 如被請求方告知請求方，被移交的人不再需要被羈押，則該人須獲釋放。
4. 如依據在本條下的請求而移交某人，在該人已作證或已提供協助或在不再需要該人出席的更早時間，須按照被請求方所同意的安排，在切實可行的範圍內盡快將該人送回被請求方。
5. 被移交的人在被請求方所須服的刑期，須扣除他被羈押在請求方內所服的期間。
6. 任何人如不同意根據本條作證或提供協助，不得因此依據請求方或被請求方的法律而處罰該人或向其施加強制措施。

of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.

5. For the purposes of this Article, the taking of evidence includes the production of documents or other material.

ARTICLE 12

AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence or to provide assistance in criminal proceedings in that Party.
2. The Requested Party shall transfer a person in custody to the Requesting Party only if:
 - (a) the person freely consents to the transfer; and
 - (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred.
3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released.
4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after that person has given evidence or provided assistance or at such earlier time as the person's presence is no longer required.

S1-25
第 525Z 章

附表 1

Schedule 1

S1-26
Cap. 525Z

第十三條

安排其他人作證或提供協助

1. 請求方可請求被請求方協助邀請一名不屬本協定第十二條所適用的人，在請求方作證或提供協助。請求方須承諾就該人的安全作出滿意的安排，並提供關於須付開支或津貼的資料。
2. 被請求方須邀請該人，並迅速將該人的回應知會請求方。如該人同意，則被請求方須採取所有必要步驟，以便利執行請求。
3. 任何人如不同意根據本條作證或提供協助，不得因此而依據請求方或被請求方的法律處罰該人或向其施加強制措施。

ARTICLE 13

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

1. The Requesting Party may request the assistance of the Requested Party in inviting a person, not being a person to whom Article 12 of this Agreement applies, to give evidence or provide assistance in the Requesting Party. The Requesting Party shall undertake to make satisfactory arrangements for the safety of such person and provide information on any expenses or allowances payable.
2. The Requested Party shall invite the person and promptly inform the Requesting Party of the person's response. If the person consents, the Requested Party shall take all necessary steps to facilitate the request.
3. A person who does not consent to give evidence or to provide assistance under this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or the Requested Party.

S1-27
第 525Z 章

附表 1

Schedule 1

S1-28
Cap. 525Z

第十四條

安全通行

1. 除本條第 2 款另有規定外，如某人是依據在本協定第十二條或第十三條下提出的請求而身在請求方：
 - (a) 該人不得因其在離開被請求方之前所犯的任何刑事罪行而在請求方被拘留、檢控或被限制人身自由；
 - (b) 假如不在請求方便不得因某事而遭受民事起訴，則該人不得因該事而遭受民事起訴；及
 - (c) 如無該人同意，該人不得被要求在與該項請求有關的刑事事宜以外的任何刑事法律程序中作證，或在與該項請求有關的刑事事宜以外的任何刑事偵查中提供協助。
2. 如該人在接獲正式通知無須再逗留之後的十五 (15) 天內，本可自由離去，仍未離開請求方，或在離開後返回，則本條第 1 款不適用。
3. 同意依據本協定第十二條或第十三條作證的人，不得基於其證供而遭受檢控，但犯偽證罪或藐視法庭罪則不在此限。

第十五條

提供可供公眾取閱的文件和其他紀錄

ARTICLE 14

SAFE CONDUCT

1. Subject to paragraph 2 of this Article, where a person is in the Requesting Party pursuant to a request made under Articles 12 or 13 of this Agreement:
 - (a) the person shall not be detained, prosecuted or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his or her departure from the Requested Party;
 - (b) the person shall not be subject to civil proceedings to which the person could not be subjected if he or she were not in the Requesting Party; and
 - (c) the person shall not, without his or her consent, be required to give evidence in any criminal proceedings or to assist in any criminal investigation other than the criminal matter to which the request relates.
2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days after he or she has been officially notified that his or her presence is no longer required or, having left, has returned.
3. A person who consents to give evidence pursuant to Articles 12 or 13 of this Agreement shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court.

ARTICLE 15

PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS

S1-29
第 525Z 章

附表 1

Schedule 1

S1-30
Cap. 525Z

1. 被請求方須向請求方提供可供公眾取閱的文件或紀錄的副本。
2. 被請求方可在其本地法律及慣例的規限下，向請求方提供政府部門或機構所管有但不供公眾取閱的文件或紀錄的副本。

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records.
2. The Requested Party may, subject to its domestic law and practice, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available.

第十六條

ARTICLE 16

搜查及檢取

SEARCH AND SEIZURE

1. 如請求方就在該方的刑事事宜提出搜查、檢取及交付物料的請求，被請求方須在其法律容許的範圍內，執行請求。
2. 如請求方要求提供與搜查的結果、檢取的地點和情況以及檢獲物料的保管有關的資料，被請求方須予提供。
3. 如被請求方把檢獲的物料交付請求方，請求方須遵循被請求方就該等物料施加的任何條件。

1. The Requested Party shall, to the extent its law permits, carry out requests made in respect of a criminal matter in the Requesting Party for the search, seizure and delivery of material to that Party.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

第十七條

ARTICLE 17

犯罪得益

PROCEEDS OF CRIME

1. 如請求方提出請求，被請求方須盡力查明是否有任何犯罪得益處於其司法管轄區，並須把調查結果通知請求方。請求方在提出請求

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In

S1-31
第 525Z 章

附表 1

時，須把相信這些得益可能處於被請求方司法管轄區的理由通知被請求方。

2. 被請求方如根據第 1 款尋獲涉嫌犯罪得益，則須採取其法律容許的措施，防止任何人處理、轉讓或處置這些犯罪得益，以待請求方的法院就這些得益作出最終裁定。

3. 被請求方須在其法律容許的範圍內，執行請求方法院對充公或沒收犯罪得益的最終判令。

4. 在引用本條時，真誠第三方的權利須根據被請求方的法律受到尊重。如有第三方提出申索，被請求方須代表請求方的利益，尋求把得益保留直至在請求方的管轄法院作出最終裁定為止。

5. 被請求方須按照其法律處置所沒收的得益。如該等得益是從與公帑或公共財產有關的貪污罪行所得的，被請求方須在扣除在追討該等得益時所招致的開支後，將該等得益的餘額交還請求方。

6. 就本協定而言，“犯罪得益”包括：

- (a) 代表由犯罪所得的財產及其他利益的價值的財產；
- (b) 從犯罪而直接或間接所得或將犯罪所得變現而直接或間接所得的財產；及
- (c) 曾在或擬在與罪行有關連的情況下使用的財產，或該等財產的價值。

Schedule 1

S1-32
Cap. 525Z

making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where pursuant to paragraph 1 suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.

3. The Requested Party shall, to the extent its law permits, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting Party.

4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party. Where there is a claim from a third party, the Requested Party shall represent the interests of the Requesting Party in seeking to retain the proceeds until a final determination by a competent court in the Requesting Party.

5. The Requested Party shall dispose of confiscated proceeds in accordance with its law. Where these proceeds derive from offences of corruption relating to public funds or property the Requested Party shall, having deducted the expenses incurred in recovering the proceeds, return the balance of the proceeds to the Requesting Party.

6. For the purposes of this Agreement, “proceeds of crime” includes:

- (a) property which represents the value of property and other benefits derived from the commission of an offence;
- (b) property derived or realized directly or indirectly from the commission of an offence; and

S1-33
第 525Z 章

附表 1

Schedule 1

S1-34
Cap. 525Z

第十八條

核證和認證

1. 除第 2 款另有規定外，協助請求、支持請求的文件及因應請求而提供的文件，無需任何形式的核證或認證。
2. 在個別情況下，如請求方或被請求方要求文件須予認證，則文件須以第 3 款所規定的方式妥為認證。
3. 就本協定而言，如任何文件——
 - (a) 看來是由送出該文件的締約一方的法官或其他官員或在該方的法官或其他官員所簽署或核證的；及
 - (b) 看來是蓋上送出該文件的締約一方、或該方的部長、政府部門或政府官員的正式印章的，

該文件即屬經認證。

第十九條

代表及開支

1. 除本協定另有規定外，被請求方須作出一切必需安排，使請求方在因協助請求而引起的所有法律程序中獲得代表，並須在其他方面代表請求方的利益。
2. 被請求方須支付履行協助請求的費用，但下述項目則須由請求方負擔：

- (c) property used or intended to be used in connection with an offence or the value of such property.

ARTICLE 18

CERTIFICATION AND AUTHENTICATION

1. Subject to paragraph 2, a request for assistance, the documents in support thereof, and documents furnished in response to a request, shall not require any form of certification or authentication.
2. Where, in a particular case, the Requested or Requesting Party requests that documents be authenticated, the documents shall be duly authenticated in the manner provided in paragraph 3.
3. Documents are authenticated for the purpose of this Agreement if:
 - (a) they purport to be signed or certified by a judge or other official in or of the Party sending the documents; and
 - (b) they purport to be sealed with an official seal of the Party sending the documents or of a Minister, a Department or official of the Government, of that Party.

ARTICLE 19

REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Agreement, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in all proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

S1-35
第 525Z 章

附表 1

Schedule 1

S1-36
Cap. 525Z

- (a) 依據在本協定第十一、十二或十三條下提出的請求而提供協助的人的交通開支及住宿開支及任何其他津貼；
 - (b) 羈押人員或押送人員的開支；及
 - (c) 專家及與翻譯文件有關的費用及開支。
3. 如察覺到須支付屬特殊性質的開支以執行有關請求，締約雙方須進行磋商，以決定提供協助的條款及條件。

2. The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:
 - (a) the travel and accommodation expenses and any other allowances of a person who provides assistance pursuant to a request under Articles 11, 12 or 13 of this Agreement;
 - (b) the expenses of custodial or escorting officers; and
 - (c) fees and expenses of experts and those associated with the translation of documents.
3. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the assistance can be provided.

第二十條

解決爭議

任何因本協定的解釋、適用及履行而產生的爭議，如締約雙方的中心機關無法自行達成協議，須通過外交途徑解決。

第二十一條

修訂

締約雙方可隨時在相互同意下修訂本協定，而該等修訂將於締約雙方以書面通知對方已各自履行為使該等修訂生效的當地規定的日期起計三十(30)天後生效。

ARTICLE 20

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 21

AMENDMENT

This Agreement may be amended at any time by mutual consent of both Parties and such amendments shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective domestic requirements for the entry into force of the amendments have been complied with.

S1-37
第 525Z 章

附表 1

Schedule 1

S1-38
Cap. 525Z

第二十二條

生效及終止

1. 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的當地規定的日期起計三十 (30) 天後生效。
2. 本協定適用於協助請求，不論有關的作為或不作為是否在協定生效之前發生。
3. 締約一方可隨時藉給予締約另一方書面通知而終止本協定，而本協定將於通知發出日期起計六 (6) 個月後失效。
4. 在本協定終止前已接獲的協助請求，仍須按照協定的條款處理，如同協定仍然有效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

ARTICLE 22

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective domestic requirements for the entry into force of the Agreement have been complied with.
2. This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to the Agreement entering into force.
3. Either Party may terminate this Agreement by notice in writing at any time and this Agreement shall cease to be in force six (6) months after the date on which notice is given.
4. Requests for assistance which have been received prior to termination of this Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement were still in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

S1-39
第 525Z 章

附表 1

Schedule 1

S1-40
Cap. 525Z

本協定於二零零八年四月三日在香港簽訂，每份均用中文、英文及印度尼西亞文寫成。各文本均為真確本。如有釋義上的分歧，則以英文文本為準。

DONE in duplicate at Hong Kong on the Third day of April Two Thousand and Eight in the Chinese, English and Indonesian languages. All texts are equally authentic. If there is any divergence of interpretation, the English text shall prevail.

註：# 《中華人民共和國香港特別行政區政府與印度尼西亞共和國政府關於刑事事宜相互法律協助的協定》以中文、英文及印度尼西亞文簽訂，各文本均為真確本。特區政府保安局備有該協定的印度尼西亞文文本供參閱。

Note:# The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Indonesia concerning Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and Indonesian languages, all texts being equally authentic. The Indonesian text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

附表 2

[第 2 條]

對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通至如下所示 ——
 - “(e) 該項請求關乎因外地罪行而對某人進行的檢控，而 ——*
 - (i)* 該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，被有關地方或香港*的管轄法院或其他當局定罪、裁定無罪或赦免→**；*或
 - (ii)* 該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，*已** 接受該地方或香港的* 法律所規定的懲罰；”。
2. 本條例第 17(3)(b) 條須予變通至如下所示 ——
 - “(b) 該人可自由離開香港並接獲通知他已無須為下述任何目的逗留，但他沒有在接獲該通知後的 15 天內離開香港*在有機會離開香港的情況下仍留在香港，但並非為下述目的而留在香港** ——
 - (i) 該項請求所關乎的目的；或**
 - (ii) 為給予香港刑事事宜方面的協助的目的，而該刑事事宜屬律政司司長以書面證明適宜由該人就該事宜給予協助的。”。

Schedule 2

[s. 2]

Modifications to the Ordinance

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows—
 - “(e) the request relates to the prosecution of a person for an external offence in a case where the person—*
 - (i)* has been convicted, acquitted or pardoned by a competent court or other authority in the place,** or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence.* or
 - (ii)* has undergone the punishment provided by the law of that place or Hong Kong**, in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.
2. Section 17(3)(b) of the Ordinance shall be modified to read as follows—
 - “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that the person’s presence is no longer required for any of the following purposes* ~~has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for**~~—
 - (i) the purpose to which the request relates; or**
 - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”.

S2-3
第 525Z 章

附表 2

-
- * 劃上底線的字句屬增訂部分。(劃上底線是為了使該項變通易於識別)。
 - ** 劃上橫線的字句屬刪除部分。(劃上橫線是為了使該項變通易於識別)。

Schedule 2

S2-4
Cap. 525Z

-
- * The words underlined are added. (The underlining is for ease of identifying the modification).
 - ** The words crossed out are deleted. (The crossing out is for ease of identifying the modification).